



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Department of Taxation ("TAX")
<b>Virginia Administrative Code (VAC) citation</b>	23 VAC 10-10-10 through 23 VAC 10-10-90
<b>Regulation title</b>	Guidelines for Public Participation in Regulation Development and Promulgation.
<b>Action title</b>	Amendment of Guidelines for Public Participation in Regulation Development and Promulgation to Reflect Changes in the Administrative Process Act
<b>Date this document prepared</b>	July 30, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

This regulatory action will establish policies and procedures for public participation in the development and promulgation of regulations by TAX. This regulatory action will amend TAX's Guidelines for Public Participation in Regulation Development and Promulgation (23 VAC 10-10-10, *et seq.*) ("Guidelines") to reflect the establishment of the Virginia Regulatory Town Hall ("Town Hall") and amendments to the Administrative Process Act ("APA") made subsequent to the promulgation of the Guidelines.

This action will amend (1) 23 VAC 10-10-10 to conform to changes in the APA regarding the procedures for interested parties to petition TAX to promulgate or revise regulations; (2) 23 VAC 10-10-20 to allow TAX to place more reliance on the Town Hall as a resource for identifying and notifying parties interested in its regulatory activities; (3) 23 VAC 10-10-30 to allow TAX to omit the issuance of a Notice of Intended Regulatory Action ("NOIRA") when a NOIRA is not required by the APA; (4) 23 VAC 10-10-40 to allow TAX to place more reliance on the Town Hall as a resource for notifying interested parties of the issuance of a NOIRA; (5) 23 VAC 10-10-70 to take advantage of changes in the APA to eliminate the current requirement that notice of any public hearing regarding a proposed regulatory action be publicized in a newspaper of general circulation in the state capital; (6) 23 VAC 10-10-70 to eliminate the requirement

that TAX mail notice concerning any proposed regulatory action to interested parties and to comply with the mandate of Executive Order 36 (2006) requiring TAX to post such notice on the Town Hall; and (7) the chapter generally to delete unnecessary provisions paraphrasing clear and unambiguous provisions of the APA. This action will also repeal 23 VAC 10-10-90, which requires TAX to physically print and distribute any regulation.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The Tax Commissioner approved the amendment of the Guidelines for Public Participation in Regulation Development and Promulgation on October 14, 2005.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." Additionally, § 2.2-4007.02 of the Code of Virginia requires agencies to develop, adopt and utilize public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations pursuant to the provisions of this chapter. The authority for the current regulatory action is discretionary.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

This regulatory action is necessary to ensure a predictable and adequate revenue stream for the government to provide for the health, safety and welfare of its citizens. As the result of a comprehensive review of all of its regulations, TAX has identified numerous regulations that need to be promulgated, amended or repealed, including its Public Participation Guidelines. The purpose of this action is to update the Guidelines to reflect changes in the APA made subsequent to the promulgation of the Guidelines and to reflect the requirements of Executive Order 36 (2006) requiring all agencies to post all rulemaking actions on the Virginia Regulatory Town Hall to ensure that the public is adequately informed of rulemaking activity.

Given the volume of regulatory actions planned by TAX, this regulatory action is necessary to update the Guidelines to fully take advantage of the Town Hall and the changes in the APA that streamline the regulatory process.

### Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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As the changes to TAX's Public Participation Guidelines made by this regulatory action are consistent with the Administrative Process Act and Executive Order 36 (2006), this action is not expected to be controversial.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

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This regulatory action will amend TAX's Guidelines for Public Participation in Regulation Development and Promulgation (23 VAC 10-10-10, *et seq.*) ("Guidelines") to reflect the establishment of the Virginia Regulatory Town Hall ("Town Hall") and changes in the Administrative Process Act ("APA").

#### 23 VAC 10-10-10

This action will amend 23 VAC 10-10-10 to reflect changes in APA regarding the procedures for individuals and groups to petition TAX to promulgate or revise regulations.

23 VAC 10-10-10 currently provides that TAX will respond to petitions requesting revision or development of a regulation within 180 days from the date the petition is received by TAX. This provision is no longer consistent with the APA. This action amends 23 VAC 10-10-10 to simply state that TAX will handle requests for rulemaking as set forth in the APA. The APA sets forth detailed procedures for responding to requests for rulemaking that do not need to be repeated in the Guidelines.

23 VAC 10-10-10 currently requires interested parties to contact TAX in writing to express interest in participating in the regulation development process generally, or in specific regulation development efforts, or to petition for the development or revision of a regulation or regulations. This action will amend 23 VAC 10-10-10 to reflect the establishment of the Town Hall by requiring interested parties to register and use the Town Hall to receive notification of the department's regulatory actions and meetings.

23 VAC 10-10-10 currently requires any person interested in participating in specific regulation development efforts or petitioning for the development or revision of a regulation or regulations to write to the Assistant Commissioner for Tax Policy. This action will amend 23 VAC 10-10-10 to specify that interested parties should notify the department's regulatory coordinator or other contact listed on the Town Hall.

23 VAC 10-10-20

23 VAC 10-10-20 currently requires TAX to take the following steps prior to the development of any regulation to identify associations, committees, groups, or individuals whom may be interested in or affected by the proposal: (1) obtain annually from the Secretary of the Commonwealth a list of all registered lobbyists; (2) utilize the statewide listing of business, professional, civic, and charitable associations and societies in Virginia published by the State Chamber of Commerce; (3) utilize department subject matter files to identify persons who have previously raised questions or expressed an interest in the subject matter under consideration through requests for formal rulings or administrative appeals; (4) utilize a standing list, compiled by TAX, of persons who have previously participated in public proceedings relative to similar subject matters or who have expressed an interest in all tax regulations; (5) utilize a standing list, compiled by TAX, of attorneys, certified public accountants, and corporate tax personnel who practice in the field of state and local taxation; and (6) develop a list of persons who have petitioned for the development or revision of a regulation or notified the department of an interest in participating in the regulation development process. This action will amend 23 VAC 10-10-20 to specify that TAX will use these methods to identify and encourage interested parties to register with the Town Hall to receive notification of TAX's regulatory actions and meetings. Additionally, this action will create a procedure for TAX to request that the Department of Planning and Budget remove persons who have enrolled as registered users on the Town Hall with respect to the department's regulatory activities but are no longer interested in receiving such notification or whose electronic mail is returned as undeliverable from the Town Hall's list of registered users with respect to the department's regulatory activities.

23 VAC 10-10-30

23 VAC 10-10-30 currently requires TAX to prepare a Notice of Intended Regulatory Action ("NOIRA") prior to the development of any regulation not exempt from the public participation provisions of the APA. This action will amend 23 VAC 10-10-30 to allow TAX to omit the NOIRA in situations where a NOIRA is not required by the APA.

23 VAC 10-10-30 currently details the content that TAX must place in the NOIRA. This action will amend 23 VAC 10-10-10 to simply state that the NOIRA issued by TAX must conform with the requirements of the APA. The APA sets forth detailed procedures for responding to requests for rulemaking that do not need to be repeated in the Guidelines.

23 VAC 10-10-40

23 VAC 10-10-40 currently requires TAX to (1) send the NOIRA to all persons identified as having a potential interest in the regulation; (2) publish the NOIRA in the Virginia Register; and (3) request that industry, professional and taxpayer associations to whom the NOIRA is sent publish it in newsletters or journals or use any other means available to them to disseminate the notice to their membership. This action amends 23 VAC 10-10-40 to limit the mandatory dissemination of the NOIRA to posting it on the Town Hall and publishing it in the Virginia Registrar.

23 VAC 10-10-50

23 VAC 10-10-50, which concerns the development of the working draft of the regulation by TAX, currently reiterates the APA requirement that it will not submit a proposed regulation publication in the Virginia Register until a minimum of 30 days after the notice is published in the Virginia Register. This action amends 23 VAC 10-10-50 to delete this requirement. As the APA requirement is clear and unambiguous, it does not need to be repeated in the Guidelines.

23 VAC 10-10-70

23 VAC 10-10-70, which concerns the submission of the regulation under the APA by TAX, currently reiterates numerous requirements of the APA. This action amends 23 VAC 10-10-70 to delete these requirements. As the APA requirements are clear and unambiguous, they do not need to be repeated in the Guidelines.

23 VAC 10-10-70 currently does not provide for the use of the Town Hall. This regulatory action will amend 23 VAC 10-10-70 to conform with Executive Order 36 (2006) Development and Review of Regulations Proposed By State Agencies. Executive Order 36 provides that “[i]n addition to requirements set out in the Virginia Administrative Process Act, agencies shall post all rulemaking actions on the Virginia Regulatory Town Hall to ensure that the public is adequately informed of rulemaking activity.”

23 VAC 10-10-70 currently requires TAX to publish notice of the public hearing regarding a proposed regulation “in the Richmond Times-Dispatch or another newspaper of general circulation in the state capital.” 23 VAC 10-10-70 was promulgated at a time when (former) § 9-6.14:7.1 of the Code of Virginia required newspaper publication regarding any proposed regulatory action unless it was exempted from the regulatory process. Section 2.2-4007.03 of the Code of Virginia, a successor statute to § 9-6.14:7.1 of the Code of Virginia, no longer requires newspaper publication. This action will eliminate the newspaper publication requirement. As amended by this action, 23 VAC 10-10-70 will comply with the requirement of § 2.2-4007.03 of the Code of Virginia that the proposed regulation and general notice of opportunity for oral or written submittals as to the regulation shall be published in the Virginia Register.

23 VAC 10-10-80

23 VAC 10-10-80, which concerns the adoption period for regulations, currently reiterates numerous requirements of the APA. This action amends 23 VAC 10-10-80 to delete these requirements. As the APA requirements are clear and unambiguous, they do not need to be repeated in the Guidelines.

23 VAC 10-10-80 currently does not provide for the use of the Town Hall. This regulatory action will amend 23 VAC 10-10-80 to conform to the requirements of Executive Order 36 (2006).

23 VAC 10-10-90

23 VAC 10-10-90 currently requires TAX to physically print and distribute any regulation. This regulatory action would repeal 23 VAC 10-10-90 because TAX’s regulations are freely available on its website and that of the General Assembly.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
  - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
  - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

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The regulatory action poses no disadvantages to the public or the Commonwealth. The primary advantage to the public and to the Commonwealth is that by eliminating the cost of newspaper publication of notices of public hearings, it will decrease the cost to the Commonwealth, and, ultimately, taxpayers of regulatory actions. The current requirement that TAX publish a notice of each public hearing in a newspaper of general circulation in the state capital is not only expensive, it does little to insure that the public will receive actual notice of public hearings. As there are several newspapers of general circulation

in the state capital, interested parties would need to monitor each issue of each newspaper to obtain actual notice. Additionally, some or all of these newspapers may not be available throughout the Commonwealth or in other states. The Town Hall provides a simple, free notification service for interested parties to sign up and receive email notification of regulatory actions by specific agencies. TAX has already notified taxpayers, tax practitioners and other persons who have expressed an interest in its regulatory actions to sign up for this notification service.

Another advantage of this regulatory action to the Commonwealth, and, ultimately taxpayers, is that by increasing its reliance on the Town Hall, the Commonwealth will be able to reduce its costs of mailing notices to interested parties and processing correspondence from interested parties.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no federal requirements applicable to this regulatory action.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

No localities are particularly affected by this regulatory action.

**Regulatory flexibility analysis**

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The Department has considered modifying the regulatory methods for small businesses. The regulatory methods follow the least intrusive and burdensome method consistent with statutory language, and could not be made less burdensome for small businesses without jeopardizing the enforcement of the tax laws.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	To the extent that this regulatory action eliminates the cost of newspaper publication of notices of public hearings, this action will result in a cost savings to the Commonwealth and taxpayers. The amount of the cost savings is unknown.
<b>Projected cost of the regulation on localities</b>	None.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Taxpayers and tax practitioners.
<b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Unknown. Virtually every individual and business could potentially be interested in monitoring TAX's regulatory activities. The actual number of interested parties is probably much less. As of August 9, 2006, 687 persons have signed up to be on TAX's mailing list on the Town Hall.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	None.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The Department considered alternatives to the proposed regulatory action. Doing nothing would leave the regulation inconsistent with the statute. The only alternative would be to keep the newspaper publication requirement. By keeping the newspaper publication and mailing requirements, TAX would continue to incur these unnecessary expenses.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulatory action is not expected to have an impact on family formation, stability and autonomy.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>	<b>Statute Interpreted</b>
23 VAC 10-10-10		Requires TAX to respond to petitions for rulemaking within 180 days.	Amend to simply state that TAX will handle requests for rulemaking as set forth in the APA. The APA sets forth detailed procedures for responding to requests for rulemaking that do not need to be repeated in the Guidelines.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.
23 VAC 10-10-10		Requires interested parties to contact TAX in writing to express interest in participating in its regulatory activities.	Amend to require interested parties to register and use the Town Hall to receive notification of the department's regulatory actions and meetings in order to reflect the establishment of the Town Hall.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.
23 VAC 10-10-10		Requires any person interested in participating in TAX's regulatory activities to write to TAX.	Amend to specify that interested parties should notify the department's regulatory coordinator or other contact listed on the Town Hall.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.
23 VAC 10-10-20		Requires TAX to use lists to identify interested parties prior to the development of any regulation	Amend to specify that TAX will use lists to identify and encourage interested parties to register with the Town Hall to receive notification of TAX's regulatory actions and meetings.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.
23 VAC 10-10-20		Requires TAX to use lists to identify interested parties prior to the development of any regulation	Create a procedure for TAX to request that the Department of Planning and Budget remove persons who have enrolled as registered users on the Town Hall with respect to the department's regulatory activities but are no longer interested in receiving such notification or whose electronic mail is returned as undeliverable	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.

			from the Town Hall's list of registered users with respect to the department's regulatory activities.	
23 VAC 10-10-30		Requires TAX to prepare a NOIRA prior to the development of any regulation not exempt from the public participation provisions of the APA.	Amend to allow TAX to omit the NOIRA in situations where a NOIRA is not required by the APA.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.
23 VAC 10-10-30		Details the content that TAX must place in the NOIRA.	Amend to simply state that the NOIRA issued by TAX must conform with the requirements of the APA. The APA sets forth detailed procedures for responding to requests for rulemaking that do not need to be repeated in the Guidelines.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.
23 VAC 10-10-40		Requires TAX to (1) mail NOIRA to all interested parties; (2) publish the NOIRA in the Virginia Register; and (3) request that it be published in newsletters.	Amends to limit the mandatory dissemination of the NOIRA to posting it on the Town Hall and publishing it in the Virginia Registrar.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.
23 VAC 10-10-50		Currently reiterates the APA requirement that TAX will not submit a proposed regulation for publication in the Virginia Register until a minimum of 30 days after the notice is published in the Virginia Register.	Amend to delete this requirement. As the APA requirement is clear and unambiguous, it does not need to be repeated in the Guidelines.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.
23 VAC 10-10-70		Reiterates numerous requirements of the APA.	Amends to delete these requirements. As the APA requirements are clear and unambiguous, they do not need to be repeated in the Guidelines.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.
23 VAC 10-10-70		Does not provide for the use of the Town Hall.	Amend to conform with Executive Order 36 requiring agencies to post all rulemaking actions on the Town Hall to ensure that the public is adequately informed of rulemaking activity.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.

23 VAC 10-10-70		Requires TAX to publish notice of the public hearing regarding a proposed regulation "in the Richmond Times-Dispatch or another newspaper of general circulation in the state capital."	Amend to eliminate the newspaper publication requirement, which is no longer required by the APA.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.
23 VAC 10-10-80		Reiterates numerous requirements of the APA.	Amend to delete these requirements. As the APA requirements are clear and unambiguous, they do not need to be repeated in the Guidelines.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.
23 VAC 10-10-80		Does not provide for the use of the Town Hall.	Amend to conform to the requirements of Executive Order 36 (2006).	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.
23 VAC 10-10-90		Requires TAX to physically print and distribute any regulation.	Repeal because TAX's regulations are freely available on its website and that of the General Assembly.	None. Public Participation Guidelines are required by Code of Va. § 2.2-4007.02.